APPENDIX C

Legislative History of Section 303(r) of the Communications Act of 1934, as amended

Following the unfortunate loss of life as a result of fire at sea on the steamship *Morro Castle* (September 8, 1934), and the further loss of life as a consequence of the sinking of the steamship *Mohawk* (January 24, 1935), S. Res. 63 was introduced in the United States Senate on January 28, 1935, 79 Cong. Rec. 1039 (1935). That resolution, among other things, requested the Senate Committee on Commerce to initiate inquiries into the circumstances of those two disasters, as well as the broader question of safety of life at sea, and to make recommendations to Congress on what measures might be taken to better insure the safety of life and property at sea in the future. In the words of the Senate Commerce Committee:

> The *Morro Castle* and the *Mohawk* disasters moved the Senate of the United States to adopt a resolution requesting the Committee on Commerce of the Senate or a subcommittee thereof to conduct a study of the causes of these disasters, to make studies which might throw light on the question of safety of life at sea, and to make recommendations to the Congress for greater security of persons and property at sea. The Committee on Commerce authorized its chairman to organize a Subcommittee of the Department of Commerce and Merchant Marine, and this subcommittee authorized the chairman, Senator Copeland, to solicit the aid of technical experts in the work directed by this Senate resolution. A technical committee of such experts was appointed. This general technical committee gave special consideration to the problem of radio, to the part radio plays in the navigation and operation of ships, and to its contribution to safety. As a result of this study of the problem the bill, which the Commerce Committee now reports, was prepared and introduced by Senator Copeland.

S. Rep. No. 2060, 74th Cong., 2d Sess. 2-3 (1936).

The bill referred to was S. 4619, an amended version of S. 3954, introduced by Senator Copeland on January 11, 1937, the purpose of which was "to modernize our law with respect to radio installations and radio operations aboard ships to the end that safety at sea may be further assured." *Id.* at 1.

The FCC's view of the proposed legislation is found in the testimony of Lt. Commander E. M. Webster before the Senate subcommittee considering the measure:

> The primary purpose of the recommended legislation is to replace and modernize the Ship Act [of 1910, as amended in 1912] dealing with the equipping of ships with radio apparatus and the manning by operators for safety purposes. In view of the close relationship between the Ship Act and the Communications Act, 1934, it is believed both logical and necessary to combine the two in enacting new legislation to replace the Ship Act. Therefore it will be noted that the suggested legislation is in the form of amendments to the Communications Act; otherwise, it would necessitate a repetition of many provisions of the Communications Act in order to form a complete related whole.
>
> Both the Ship Act, enacted 25 years ago, and the Communications Act of 1934 are now inadequate as they do not provide by statute for the full utilization of radio as a major safety factor at sea . . . .

Hearings on S. 3954 Before a Subcommittee of the Senate Committee on Commerce, 74th Cong., 2d Sess. 11 (1936). See also, statement of Irvin Stewart, *id.* at 8-9.

The main provisions of the bill were four: (1) A substantial broadening of the category of ships required to have radio communications equipment operated by qualified operators, as well as radio direction-finder apparatus; (2) Detailed technical requirements for radio installations on board ships, which requirements were in conformity with those found in the 1929 International Convention on Safety of

Life at Sea and the International Telecommunication Convention; (3) A revision of earlier requirements regarding the number, qualifications, functions and licensing of operators of radio installations on board ships; (4) A requirement that every motorized lifeboat required by treaty or statute be fitted with radio equipment. *Id.* at 3-4. "Other provisions of the bill," stated the Committee, "are either redrafts of existing law or involve in the main non-controversial matters." *Id.* at 4.

Among those "other provisions" of S. 4619, Section 4 of the 1934 Communications Act was proposed to be amended to add a new subsection (o):

> For the purpose of obtaining maximum effectiveness from the use of radio and wire communications in connection with safety of life and property, the Commission shall investigate and study all phases of the problem and the best methods of obtaining the cooperation and coordination of these systems. *The Commission shall, by proper rules and regulations or by conditions incorporated in the authorization or license, prescribe the conditions and procedure to be observed, in harmony with the law, in communications involving safety and property.* [Emphasis added.]

S. 4619 was passed by the Senate and sent to the House, but was unable to be acted on by that body before the end of that session of the 74th Congress.

During the latter part of 1936, the International Convention on Safety of Life at Sea, London, 1929, was ratified by the United States. And in the following year, on January 11, 1937, a bill essentially the same as the earlier S. 4619 was introduced in the first session of the 75th Congress by Senator Copeland as S. 595. Its counterpart in the House was H. R. 4191.

The earlier proposed addition of a subsection (o) to section 4 of the Communications Act was preserved in both the House and Senate bills. In addition, both bills proposed a new section 360(a) to the Communications Act:

> In addition to any other provision of law, the Commission shall make such rules and regulations, determinations, or findings as may appear to be necessary to give effect to the radio and communications provisions of the safety convention.

This provision was part of a proposed new Part II of Title III of the 1934 Communications Act, entitled "Radio Equipment and Radio Operators on Board Ship," the stated purpose for which was ". . . to promote safety of life and property at sea through the use of radio." S. 595, 75th Cong., 1st Sess. §351 (1937).

During the hearings before both the Senate and House committees considering the measure, the Federal Communications Commission recommended, among other things, that the second sentence of section 4(o) and the entirety of section 360(a) of the bill be deleted, and a new section 303(r) be substituted, as follows:

> (r) [Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity require shall—] Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

Hearings on H. R. 4191 Before the House Committee on Merchant Marine and Fisheries, 75th Cong., 1st Sess. 2-3 (1937); Hearings on S. 595 Before a Subcommittee of the Senate Committee on Commerce, 75th Cong., 1st Sess. 12 (1937).

The reasons for the suggested change were contained in a Statement by Anning S. Prall, then Chairman of the FCC:

> In view of the fact that many of the situations which will confront the Commission as a result of

> the ratification of the safety convention and the passage of this bill will be new, that changes in the rules and regulations may be desirable from time to time, and that new international radio agreements doubtless, will be effected in the future, it is important that the Commission should have authority generally to prescribe such rules and regulations and to impose such restrictions and conditions as may be necessary to administer the act as amended and existing or future international agreements concerned with radio and wire communication. *Such general authority would permit the Commission to meet promptly and effectively situations which arise under the safety convention, provisions of this bill, and international agreements entered into in the future.*

Ibid. (emphasis added).

The bill, as reported out of the Senate Commerce Committee, S. Rep. No. 196, 75th Cong., 1st Sess. (1937), and as enacted, 50 Stat. 191, adopted the FCC's suggestion.